



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 10090778

Date: JAN. 19, 2021

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner, a researcher in the field of ophthalmology, seeks second preference immigrant classification as a member of the professions holding an advanced degree, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Texas Service Center denied the Form I-140, Immigrant Petition for Alien Worker, concluding that the Petitioner had not established that she met the second and third prongs under the analytical framework set forth in *Matter of Dhanasar*, 26 I&N Dec. 884. As a result, the Director determined that the Petitioner had not demonstrated that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

On appeal, the Petitioner asserts that she is eligible for a national interest waiver.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Upon *de novo* review, we will sustain the appeal.¹

I. ANALYSIS

Although not specifically addressed in the Director's decision, the record demonstrates that the Petitioner 1) qualifies as a member of the professions holding an advanced degree² and 2) meets the first prong under the analytical framework set for in *Matter of Dhanasar*, 26 I&N Dec. 884.

For the reasons discussed below, we find the Petitioner has established eligibility for a national interest waiver under the remaining two prongs of the *Dhanasar* analysis.

¹ We review the questions in this matter *de novo*. *See Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015).

² The Petitioner presented an academic credentials evaluation describing the equivalence of her doctor of medicine, doctor of philosophy in science with a major in health science, and master of medical science in ophthalmology degrees from the [redacted] University [redacted]. *See* 8 C.F.R. § 204.5(k)(3)(i)(A).

A. Well Positioned to Advance the Proposed Endeavor

The second prong of the *Dhanasar* analysis focuses on the Petitioner. To determine whether she is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual's education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals.

Among the submitted evidence are copies of the Petitioner's multiple advanced degrees, numerous cited articles published in top medical journals, many of which list her as the first-author, and several reference letters from medical professionals and researchers that explain how the Petitioner has advanced the field's knowledge in the diagnosis and treatment of a number of retinal diseases, including [redacted] retinopathy and [redacted] retinitis. [redacted] a professor in the Department of Ophthalmology at [redacted] University College of Medicine and the [redacted] Hospital, discusses a number of the Petitioner's research projects, including her finding that the recurrence of the [redacted] virus in one or both eyes "was often the result of the virus becoming latent . . . and therefore [she] extended the treatment period of the antiviral [redacted]" which "successfully minimized recurrence, thereby establishing a proven strategy to treat patients that yields minimal adverse effects." [redacted] a professor of ophthalmology at the [redacted] Eye Institute at [redacted] University, explains that "by treating patients with [redacted] injections rather than the often-used antivirals," the Petitioner was able to prevent "the effects associated with antiviral agents." [redacted], an honorary clinical associate professor within the [redacted] University [redacted]'s Department of Ophthalmology and Visual Sciences, describes the Petitioner's research on [redacted] and indicates that she found that "aggressive treatments of anti-[redacted] and [redacted] most effectively treated [redacted] while minimizing complications" and is "phenomenally valuable for the real world application of treatments." [redacted] an associate professor of ophthalmology at the [redacted] University [redacted] indicates that the Petitioner's [redacted] research "proved the effectiveness of generating [redacted] [redacted] that retain their original corneal phenotypes, thus verifying the beneficial use [redacted] [redacted] therapy over corneal transplants, which require human donors" and "has real world applications as it introduces an alternative to corneal transplants."

In addition, we note the Petitioner's lengthy and progressive history in her field including as a resident, intern, clinical fellow, clinical assistant professor and research assistant. Further, she will continue to perform [redacted] research to [redacted] tissues of the eye" at the Department of Ophthalmology at [redacted] University. The evidence, when considered in the aggregate, establishes that she is well positioned to advance her proposed research in the United States.

The Petitioner's experience and expertise in ophthalmology, published work and its impact upon other researchers, record of success in contributing to research projects, and progress in the area of advancing the study of retinal diseases establish that she is well positioned to advance her proposed endeavor. We therefore conclude that she satisfies the second prong of the *Dhanasar* framework.

B. Balancing Factors to Determine Waiver's Benefit to the United States

The third prong requires a petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. Not only does the Petitioner possess considerable experience and expertise, but the record also demonstrates the widespread benefits associated with research developments in her field and their broad application. The Petitioner has documented her past successes in advancing research and providing influential research findings. In addition, her work has garnered interest from other researchers in the medical community who used it to further their own research. Based on the Petitioner's track record of successful research and the significance of her ongoing studies, we find that she offers contributions of such value that, on balance, they would benefit the United States even assuming that other qualified U.S. workers are available.

II. CONCLUSION

The Petitioner has met the requisite three prongs set forth in the *Dhanasar* analytical framework. We conclude that she has established she is eligible for and otherwise merits a national interest waiver as a matter of discretion.

ORDER: The appeal is sustained.